

Internal Revenue Service

District  
Director

Department of the Treasury

P.O. Box 2508  
Cincinnati, OH 45201

Person to Contact:

Telephone Number:

Refer Reply to:

EP/EO

Employer Identification Number:

Date:

JAN 19 1991

Dear Sir or Madam:

We have considered your application for recognition of exemption from Federal income tax under the provisions of section 501(c)(3) of the Internal Revenue Code of 1986 and its applicable Income Tax Regulations. Based on the available information, we have determined that you do not qualify for the reasons set forth on Enclosure I.

Consideration was given to whether you qualify for exemption under other subsections of section 501(c) of the Code and we have concluded that you do not.

As your organization has not established exemption from Federal income tax, it will be necessary for you to file an annual income tax return on Form 1120.

If you are in agreement with our proposed denial, please sign and return one copy of the enclosed Form 6018, Consent to Proposed Adverse Action.

You have the right to protest this proposed determination if you believe that it is incorrect. To protest, you should submit a written appeal giving the facts, law and other information to support your position as explained in the enclosed Publication 892, "Exempt Organizations Appeal Procedures for Unagreed Issues". The appeal must be submitted within 30 days from the date of this letter and must be signed by one of your principal officers. You may request a hearing with a member of the office of the Regional Director of Appeals when you file your appeal. If a hearing is requested, you will be contacted to arrange a date for it. The hearing may be held at the Regional Office, or, if you request, at any mutually convenient District Office. If you are to be represented by someone who is not one of your principal officers, he must file a proper power of attorney and otherwise qualify under our Conference and Practice Requirements as set forth in Section 601.502 of the Statement of Procedural Rules. See Treasury Department Circular No. 230.

[REDACTED] [REDACTED]

If you do not protest this proposed determination in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Internal Revenue Code provides in part that:

A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the district court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service.

If we do not hear from you within the time specified, this will become our final determination. In that event, appropriate State officials will be notified of this action in accordance with the provisions of section 6104(c) of the Code.

Sincerely yours,

[REDACTED]

District Director

Enclosures: 2

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[REDACTED]

To receive and administer funds for the giving freely to the following: Pre-school; after school programs, orphanages; below poverty single families; special education programs; welfare programs, etc. [REDACTED] is audio/visual motivational tape given to donors.

Page two of the application dated [REDACTED], states that you have done extensive marketing in public educational section and feel that you have found a suitable educational module by the name of [REDACTED]. It contains basic math and early elementary science.

The market tests showed that the tape needs to be revised. [REDACTED] tapes have been returned to [REDACTED] to be recycled in [REDACTED]. The Foundation will then purchase additional tapes to test market and to sell.

A proposed budget submitted on [REDACTED], shows [REDACTED] donating \$[REDACTED] per year and someone else donating \$[REDACTED] per year in electric computer graphics equipment. This document also states that [REDACTED] is financing the foundation.

The proposed budgets submitted on [REDACTED], for the years of [REDACTED] and [REDACTED] show that the organization plans to seek sponsors for the tapes in the amount of \$[REDACTED] each. Corporations who sponsor part of the tape give-away will be able to add a commercial message at the end of the tape. The tapes would then be donated to headstart programs, orphanages, child care centers, and single parent households. The new budget does not mention the donation of computer graphics equipment.

Expenses of the Foundation through [REDACTED] will be for tape purchases, delivery charges, compensation of officers, travel expenses, direct mail letters, automobile expenses, and miscellaneous marketing and telephone expenses. Other financial information in the application indicates that the Foundation may pay for office space, meals and lodging. [REDACTED] eventually plans to pay himself \$[REDACTED] per year to run the business.

We tried several times to clarify your proposed finances, but every time we wrote to you, you changed the categories and the figures. We are unable to tell how you will operate when the next version of the tape is available.

The tapes are produced at facilities located at [REDACTED]. A sample purchase order submitted with the application indicates that [REDACTED] is selling the videotapes for \$[REDACTED] each. The news release on the bottom of the form states: "Do you have any requests to make on subject matter that you would like us to make? We will manufacture custom videotapes with 15/30 minute spots for your message."

Section 501(c)(3) of the Internal Revenue Code provides for the exemption from Federal income tax of corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation, (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office.

Section 501(c)(3) of the Code provides, in part, for the exemption from Federal income tax of organizations organized and operated exclusively for charitable, religious or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations states that in order to qualify under section 501(c)(3) of the Code, an organization must be both organized and operated exclusively for one or more exempt purposes. If an organization fails to meet either the organizational or operational test, it is not exempt.

Section 1.501(c)(3)-1(a)(2) of the Regulations states that the term "exempt purpose or purposes", means any purpose or purposes specified in section 501(c)(3) of the Code.

Section 1.501(c)(3)-1(c)(1) of the Regulations states that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3) of the Code. An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(d)(1)(ii) of the Regulations states that an organization is not operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. It must not be operated for the benefit of designated individuals or the persons who created it.

An organization engaged in activities relating to "est" programs involving training, seminars, lectures, etc., in areas of intrapersonal awareness and communication which were conducted under licensing arrangements with a for-profit corporation, was held not to be exempt under section 501(c)(3) of the Code. The court held that although the organization was educational in nature, it served the commercial purposes of the for-profit corporation and, therefore, was not operated exclusively for exempt purposes. est of Hawaii, A Hawaiian Corporation v. Commissioner, 71 T.C. 1067 (1979).

Your organization is providing marketing research services for a for-profit company owned by the son of the President and creator of the Foundation. You purchased video tapes at above cost and then gave approximately half of them back to the seller because you could not re-sell them. You have no definite plans to donate any significant number of tapes to any charitable organization in the next few years. Thus far, the income of your organization has inured to a for-profit corporation.

You do not qualify for exemption under section 501(c)(3) of the Code.